

rules that the taxes are allocated on an annual basis and that foreign taxes paid on U.S. source income shall be allocated to the separate category that includes that U.S. source income (see §1.904-6(a)), shall apply for purposes of allocating taxes to separate categories. Allocation of taxes pursuant to §1.904-6 shall be made before the recapture of any separate limitation loss accounts of the taxpayer pursuant to the rules of this section.

(c) *Effective/applicability date.* This section applies to taxpayers that sustain separate limitation losses in taxable years beginning on or after January 1, 2012. Taxpayers may choose to apply this section to separate limitation losses sustained in other taxable years beginning after December 21, 2007, including periods covered by 26 CFR §1.904(f)-8T (revised as of April 1, 2010). For rules relating to taxable years beginning after December 31, 1986, and on or before December 21, 2007, see section 904(f)(5).

[T.D. 9595, 77 FR 37580, June 22, 2012]

**§§ 1.904(f)-9—1.904(f)-11 [Reserved]**

**§ 1.904(f)-12 Transition rules.**

(a) *Recapture in years beginning after December 31, 1986, of overall foreign losses incurred in taxable years beginning before January 1, 1987—(1) In general.* If a taxpayer has a balance in an overall foreign loss account at the end of its last taxable year beginning before January 1, 1987 (pre-effective date years), the amount of that balance shall be recaptured in subsequent years by re-characterizing income received in the income category described in section 904(d) as in effect for taxable years beginning after December 31, 1986 (post-effective date years), that is analogous to the income category for which the overall foreign loss account was established, as follows:

(i) Interest income as defined in section 904(d)(1)(A) as in effect for pre-effective date taxable years is analogous to passive income as defined in section

904(d)(1)(A) as in effect for post-effective date years;

(ii) Dividends from a DISC or former DISC as defined in section 904(d)(1)(B) as in effect for pre-effective date taxable years is analogous to dividends from a DISC or former DISC as defined in section 904(d)(1)(F) as in effect for post-effective date taxable years;

(iii) Taxable income attributable to foreign trade income as defined in section 904(d)(1)(C) as in effect for pre-effective date taxable years is analogous to taxable income attributable to foreign trade income as defined in section 904(d)(1)(G) as in effect for post-effective date years;

(iv) Distributions from a FSC (or former FSC) as defined in section 904(d)(1)(D) as in effect for pre-effective date taxable years is analogous to distributions from a FSC (or former FSC) as defined in section 904(d)(1)(H) as in effect for post-effective date taxable years;

(v) For general limitation income as described in section 904(d)(1)(E) as in effect for pre-effective date taxable years, see the special rule in paragraph (a)(2) of this section.

(2) *Rule for general limitation losses—(i) In general.* Overall foreign losses incurred in the general limitation category of section 904(d)(1)(E), as in effect for pre-effective date taxable years, that are recaptured in post-effective date taxable years shall be recaptured from the taxpayer's general limitation income, financial services income, shipping income, and dividends from each noncontrolled section 902 corporation. If the sum of the taxpayer's general limitation income, financial services income, shipping income and dividends from each noncontrolled section 902 corporation for a taxable year subject to recapture exceeds the overall foreign loss to be recaptured, then the amount of each type of separate limitation income that will be treated as U.S. source income shall be determined as follows: